

## **810 KAR 1:029. Hearings, reviews and appeals.**

RELATES TO: KRS 230.355

STATUTORY AUTHORITY: KRS 230.355

NECESSITY, FUNCTION, AND CONFORMITY: To regulate conditions under which racing shall be conducted in Kentucky. The function of this administrative regulation establishes the procedures and requirements relating to hearings, reviews, and appeals.

Section 1. Definitions. "Steward" means a racing steward or racing judge.

Section 2. Stewards' Hearing. (1) Before holding any stewards' hearing provided for under these administrative regulations, notice in writing shall be given to any party charged with a violation other than a routine riding offense occurring in a race unless waived in writing by the person charged.

(2) Prior to a steward hearing, the party charged with a violation shall be given the notice required by Section 3(1) of this administrative regulation.

(3) All stewards' hearings shall be closed and the stewards shall cause no public announcement to be made concerning a matter under investigation until conclusion of the hearing, and the party charged has been notified of the decision.

(4) The state steward shall conduct the hearing in such a manner as to ascertain and determine the substantial rights of the parties involved and shall not be bound by technical rules of procedure and evidence.

(5) All testimony shall be given under oath and a record shall be made of the hearing, either by use of a tape recorder or by court reporter's transcript. The party charged with the violation may, however, waive the recording and the transcription of the testimony. The stewards shall not be required to receive testimony under oath in cases where their ruling is based solely upon a review of the video tapes of a race.

(6) If, at the conclusion of the hearing the stewards shall find that a statute or an administrative regulation has been violated, they shall promptly issue a written ruling which sets forth the:

- (a) Full name of every person charged with the violation;
- (b) Identification of the persons, if licensed, by license classification and address;
- (c) Statute or administrative regulation number and pertinent parts of the statute or administrative regulation violated;
- (d) Finding by the stewards as to the violation of the statute or administrative regulation; and
- (e) Penalty affixed by the stewards.

(7) Copies of the rulings shall be delivered to each party in interest, delivered to the authority, posted in the racing secretary's office, and forwarded to the office of the Association of Racing Commissioners International.

(8) At least the state steward and one (1) association steward shall be present at all times at the hearing.

(9) Review and appeal. Any party who is the subject of any order or ruling of the stewards may apply to the authority for a review of the stewards' order or ruling, except as to extent of disqualification for a foul in a race or as to a finding of fact as occurred during an incident to the running of a race.

(10) Application for review. An application to the authority for review of a steward's order or ruling shall be made within ten (10) days after the order or ruling is issued in writing, and shall:

- (a) Be in writing and addressed to the authority secretary at the authority general office;
- (b) Contain the signature of the applicant, and the address to which notices may be mailed to applicant;
- (c) Set forth the order or ruling requested to be reviewed and the date;

- (d) Set forth the reasons for making the applications; and
- (e) Request a hearing.

Section 3. Authority Hearings. Before holding any authority hearing provided for under these administrative regulations, the authority shall:

(1) Give written notice to all parties either personally or by mail. If indispensable and necessary parties propose a large class, notice shall be served upon a reasonable number thereof as representatives of the class. Notice as provided in this section shall include a statement of:

(a) Time and place of such hearing as designated by the authority and chairman. No hearing shall be less than five (5) days nor more than thirty (30) days after service of notice, unless at the request of a party and in order to provide a fair hearing;

(b) The legal authority and jurisdiction under which the hearing is to be held;

(c) Specific designation of the particular statute or administrative regulation alleged to have been violated; and

(d) A clear and concise factual statement sufficient to inform each party with reasonable definiteness of the type of acts or practices alleged to be in violation of the statute or administrative regulations promulgated thereunder. In fixing the times and places for hearings, due regard shall be had for the convenience of the parties and their representatives.

(2) The right of any party to subpoena witnesses and documentary evidence through the authority, employing the rights of discovery and use of subpoenas as would be available under the Kentucky Civil Rules of Procedure, pretrial and trial procedures also shall be governed by Kentucky Rules of Civil Procedure.

Section 4. Special Prosecutor. (1) The authority may request the Attorney General to appoint a special prosecutor to carry the burden of proof showing a statute or an administrative regulation violation. If the matter involves a violation and requires a proceeding of an adversary nature; the prosecutor shall be one who has had no prior participation in the matter of any kind. The authority also may request that the Attorney General, or a member of his staff other than the special prosecutor, serve as law officer for the authority to assist the presiding officer in rendering decisions of a judicial nature. The special prosecutor shall have the services of the Kentucky State Police for investigatory purposes.

(2) The authority shall:

(a) Permit all parties to be represented by counsel;

(b) Permit all parties to respond and present evidence and argument on all issues involved; and

(c) Permit all parties to examine authority memoranda and data and all other information which is or has been considered by the commission in investigating and hearing the matter or which may be offered as evidence.

(3) The authority shall administer oaths and issue subpoenas upon its own motion or when requested by an appearing party. Each party shall pay the cost of its subpoenas and the expenses of its witnesses. If a subpoena is disobeyed, any party may apply to the Franklin Circuit Court for an order requiring obedience; failure to comply with an order from the Franklin Circuit Court shall be cause for punishment as a contempt of the court under KRS 421.110.

(4) Unless varied by the authority, the order of proof in the de novo hearing may be:

(a) Evidence presented by the prosecution as to alleged violations;

(b) Cross-examination of prosecution witnesses and redirect examination;

(c) Evidence presented by a party charged, in defense or explanation;

(d) Cross-examination of party charged and his witnesses, redirect examination;

(e) Rebuttal or other evidence, on behalf of the prosecution or any other party in interest as deemed pertinent by the presiding officer;

- (f) Closing argument by party charged; and
- (g) Closing argument by prosecution.
- (5) The authority shall keep a record of each hearing which shall include:
  - (a) All pretrial and trial pleadings, motions, and interlocutory rulings;
  - (b) All evidence received or considered;
  - (c) A statement of matters officially noticed;
  - (d) Questions and offers of proof and rulings;
  - (e) Proposed findings and exceptions;
  - (f) All authority memoranda or data submitted to the authority in connection with the authority's consideration of the case;
  - (g) All stenographic recordings taken and transcriptions made. Oral proceedings shall be reported stenographically upon request of any party and shall be paid for by the parties desiring copies; and
  - (h) Final adjudication including findings of fact, based exclusively on evidence presented at the hearing and matters officially noticed, and any decision, opinion, and ruling by the authority on the matter.
- (6) The authority may take official notice of technical facts or customs or procedures common to racing, but all parties to the hearing shall be duly notified. Each party shall have an opportunity to contest facts so noticed, including authority memoranda and authority data.
- (7) Members of the authority participating in the adjudication of a matter before it shall not, directly or indirectly:
  - (a) In connection with any issue of fact in the matter before the authority, consult with any person or party who was engaged in the investigation or prosecution of the matter before the authority, or conduct any personal investigation outside the record, without giving an opportunity for all parties to participate.
  - (b) In connection with any issue at law, no party or representative shall be consulted without giving all parties an opportunity to participate.
- (8) The authority may make an informal disposition of the matter by stipulation, agreed settlement, consent order, or by default.
- (9) Upon conclusion of the hearing, the authority shall:
  - (a) Take the matter under advisement;
  - (b) Render a decision as promptly as possible; and
  - (c) Issue a ruling in final adjudication of the matter.
- (10) The final ruling shall set forth the:
  - (a) Full name of every person charged with a violation;
  - (b) Identification of the person, if licensed, by license classification and address;
  - (c) Statute or administrative regulation number and pertinent parts of the statute or administrative regulation alleged to have been violated;
  - (d) A separate statement of findings of fact;
  - (e) A separate statement of conclusions of law;
  - (f) A separate statement of reasons for the decisions; and
  - (g) Penalties fixed by the authority, if any.
- (11) Copies of the ruling shall be delivered to each party in interest, posted in the racing secretary's office of the association where the matter arose, and forwarded to the office of the Association of Racing Commissioners International.

Section 5. Appeal from Authority Order. Any person or licensee aggrieved by any order or decision of the authority may appeal to the Franklin Circuit Court. The appeal shall be made within ten (10) days after the entry of the order or decision of the authority by posting and filing in the office of the Franklin Circuit Court Clerk:

(1) A bond to secure the costs of the action in a sum approved by the circuit clerk. The bond shall be secured by corporate surety approved by the Department of Insurance.

(2) An attested copy of the appealed order or decision.

(3) An attested copy of the transcript of evidence heard by the authority and the cost of the transcript of evidence heard by the authority. The cost of the transcript shall be borne by the appellant. Appeals from a authority order or decision shall be taken as provided in KRS 243.560 to 243.590.

Section 6. Continuances. (1) All applications for continuance made prior to a hearing shall be in writing, shall set forth the reasons for the continuance, and shall be filed with the authority after giving notice of the application by mail or otherwise to all parties or their representative. At the time of the hearing, applications for continuance may be made orally. If requested, and in the manner prescribed by the authority, the party applying for the continuance shall substantiate the reasons contained in the application.

(2) If an application is made for continuance due to illness of an applicant, licensee, witness, or counsel, the application shall be accompanied by a medical certificate attesting to such illness and inability.

(3) An application for continuance of any authority hearing shall be received by the authority at least ninety-six (96) hours prior to the time fixed for a hearing. An application received by the authority within the ninety-six (96) hour period shall not be granted unless a satisfactory arrangement in writing is made with the authority for the payment of all expenses resulting from the continuance. However, the commission may waive payment of the expenses for extenuating circumstances.

(4) If the authority approves the application for continuance, the authority shall set a date for the continued hearing.

Section 7. Disqualification of Authority Members and Hearing Officer. A authority member or hearing officer may at any time withdraw from the proceeding if he deems himself disqualified, and upon the filing in good faith before the termination of the hearing of an affidavit of personal bias or disqualification of any member or hearing officer, the authority shall determine the matter as a part of the record and decision in the case. If a authority member or hearing officer withdraws or disqualifies himself, any other member of the authority participating in the hearing shall have the authority to complete the hearing and to participate in the decision. In cases where the hearing is conducted by the authority, members participating in the decision shall hear all the evidence, or shall read the evidence prior to making a decision on the evidence. At least a majority of the members of the authority shall hear all the evidence or read the record before making a final decision. (18 Ky.R. 3291; Am. 19 Ky.R. 408; eff. 8-1-92; TAm eff. 8-9-2007.)